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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues Against:

Case No. 2011-303

12 **ANA MONIQUE MAGDALENO**
116 Palos Verdes Blvd, B
13 Redondo Beach, CA 90277

STATEMENT OF ISSUES

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in
19 her official capacity as the Interim Executive Officer of the Board of Registered Nursing,
20 Department of Consumer Affairs.

21 2. On or about November 19, 2009, the Board of Registered Nursing (Board) received
22 an application for Licensure by Examination as a Registered Nurse from Ana Monique
23 Magdaleno (Respondent). On or about November 12, 2009, Respondent certified under penalty
24 of perjury to the truthfulness of all statements, answers, and representations in the application.
25 The Board denied the application on January 20, 2010.

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1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

3 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
4 conviction following a plea of nolo contendere. Any action that a board is permitted to take
5 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
6 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
7 made suspending the imposition of sentence, irrespective of a subsequent order under the
8 provisions of Section 1203.4 of the Penal Code."

9 6. Section 2736 provides, in pertinent part, that the Board may deny a license when it
10 finds that the applicant has committed any acts constituting grounds for denial of licensure under
11 section 480

12 7. Section 2761 states, in pertinent part:

13 "The board may take disciplinary action against a certified or licensed nurse or deny an
14 application for a certificate or license for any of the following:

15 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

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17 "(d) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
18 violation of, or conspiring to violate any provision or term of this chapter or regulations adopted
19 pursuant to it.

20 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
21 functions, and duties of a registered nurse, in which event the record of the conviction shall be
22 conclusive evidence thereof."

23 REGULATORY PROVISIONS

24 8. California Code of Regulations, title 16, section 1444 states, in pertinent part:

25 "A conviction or act shall be considered to be substantially related to the qualifications,
26 functions or duties of a registered nurse if to a substantial degree it evidences the present or
27 potential unfitness of a registered nurse to practice in a manner consistent with the public health,
28 safety, or welfare."

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1 alcoholic beverage and a drug, and their combined influence, in violation of Vehicle Code section
2 23152, subdivision (a) (driving under the influence of alcohol or drugs).

3 c. On or about November 17, 2005, after pleading nolo contendere, Respondent was
4 convicted of one misdemeanor count violating Vehicle Code section 23103, subdivision (a)
5 [reckless driving] in the criminal proceeding entitled *The People of the State of California v. Ana*
6 *Monique Magdaleno* (Super. Ct. Los Angeles County, 2005, No. 5SB07971). The Court placed
7 Respondent on probation for a period of 36 months, with terms and conditions. The
8 circumstances surrounding the conviction are that on or about August 27, 2005, Respondent
9 drove a vehicle upon a highway in willful or wanton disregard for the safety of persons or
10 property. She was arrested by the Redondo Beach Police Department, for violating Vehicle Code
11 section 23152, subdivision (a) (driving under the influence of alcohol or drugs).

12 d. On or about May 19, 2004, after pleading nolo contendere, Respondent was convicted
13 of one misdemeanor count violating Vehicle Code section 20002, subdivision (b) [hit and run] in
14 the criminal proceeding entitled *The People of the State of California v. Ana Monique Magdaleno*
15 (Super. Ct. Los Angeles County, 2004, No. 3SB07450). The Court placed Respondent on
16 probation for a period of 24 months, with terms and conditions. The circumstances surrounding
17 the conviction are that on or about July 1, 2003, Respondent drove a vehicle involved in an
18 accident, resulting in damage to property, and failed to stop at the scene of the accident.

19 e. On or about March 3, 2003, after pleading nolo contendere, Respondent was
20 convicted of one misdemeanor count violating Vehicle Code section 23103, subdivision (a)
21 [reckless driving] in the criminal proceeding entitled *The People of the State of California v. Ana*
22 *Monique Magdaleno* (Super. Ct. Los Angeles County, 2003, No. 3SB01330). The Court placed
23 Respondent on probation for a period of 24 months, with terms and conditions. The
24 circumstances surrounding the conviction are that on or about January 12, 2003, during a traffic
25 stop by the Hermosa Beach Police Department, in Hermosa Beach, CA, Respondent was
26 contacted. She was observed by the police officer to have blood shot watery eyes, a smell of an
27 alcoholic beverage on her breath, and displayed symptoms of alcohol intoxication. When asked if
28 she had been drinking, Respondent admitted to drinking 2 glasses of wine earlier that night. She

1 was arrested for violating Vehicle Code section 23152, subdivision (a) (driving under the
2 influence of alcohol or drugs). During the booking procedure, Respondent submitted to a blood
3 test that resulted in a blood-alcohol content level of 0.15%.

4 f. On or about October 23, 1998, after pleading nolo contendere, Respondent was
5 convicted of one misdemeanor count of violating Vehicle Code section 12500, subdivision (a)
6 [driving without a valid driver's license] in the criminal proceeding entitled *The People of the*
7 *State of California v. Ana Monique Magdaleno* (Super. Ct. Los Angeles County, 1998, No.
8 8SB08416). The Court ordered Respondent to pay a fine in the amount of \$405.00. The
9 circumstances surrounding the conviction are that on or about September 5, 1998, Respondent
10 drove a vehicle while her driver's license was suspended. She was cited for violating Vehicle
11 Code section 14601.1, subdivision (a) (driving while license is suspended or revoked).

12 **SECOND CAUSE FOR DENIAL OF APPLICATION**

13 **(Acts Warranting Denial of Licensure)**

14 10. Respondent's application is subject to denial under sections 2736 and 480,
15 subdivision (a)(3)(A) and (B), in that Respondent committed acts which if done by a licensee
16 would be grounds for suspension or revocation of his license, as follows:

17 a. Respondent was convicted of crimes substantially related to the qualifications,
18 functions, or duties of a registered nurse which to a substantial degree evidences her present or
19 potential unfitness to perform the functions authorized by her license in a manner consistent with
20 the public health, safety, or welfare, in violation of sections 2761, subdivision (f) and 490, in
21 conjunction with California Code of Regulations, title 16, section 1444. Complainant refers to,
22 and by this reference incorporates, the allegations set forth above in paragraph 9, subparagraphs
23 (a) through (f), inclusive, as though set forth fully.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Denying Ana Magdaleno's application for Licensure by Examination, as a Registered Nurse; and
2. Taking such other and further action as deemed necessary and proper.

DATED: 10-11-10 Louise R. Bailey
LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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